

### § 235.3

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or similar officer), or (2) a board of education controlling the State department of education.

(Sec. 7, Pub. L. 95–627, 92 Stat. 3621 (42 U.S.C. 1776); sec. 205, Pub. L. 96–499, The Omnibus Reconciliation Act of 1980, 94 Stat. 2599; secs. 807 and 808, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1772, 1784, 1760); Pub. L. 79–396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89–642, 80 Stat. 885–890 (42 U.S.C. 1773); Pub. L. 91–248, 84 Stat. 207 (42 U.S.C. 1759)

[41 FR 32405, Aug. 3, 1976, as amended at 44 FR 48957, Aug. 21, 1979; 44 FR 51185, Aug. 31, 1979; Amdt. 9, 48 FR 19355, Apr. 29, 1983; Amdt. 14, 51 FR 27151, July 30, 1986; 54 FR 2991, Jan. 23, 1989; Amdt. 17, 55 FR 1378, Jan. 16, 1990; 60 FR 15461, Mar. 24, 1995; 64 FR 50743, Sept. 20, 1999; 71 FR 39519, July 13, 2006; 72 FR 63792, Nov. 13, 2007]

#### § 235.3 Administration.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the program for payment to States of State administrative expense funds covered by this part. Within FNS, CND shall be responsible for administration of the program.

(b) Each State agency desiring to receive payments under this part shall enter into a written agreement with the Department for the administration of the child nutrition programs in accordance with the applicable requirements of this part, 7 CFR parts 210, 215, 220, 225, 226, 245, 15, 15a, 15b, 3015, and 3016. Each agreement shall cover the operation of the Program during the period specified therein and may be extended at the option of the Department.

(Sec. 14, Pub. L. 95–166, 91 Stat. 1338 (42 U.S.C. 1776); sec. 7, Pub. L. 95–627, 92 Stat. 3621 (42 U.S.C. 1776))

[41 FR 32405, Aug. 3, 1976, as amended at 44 FR 48957, Aug. 21, 1979; Amdt. 14, 51 FR 27151, July 30, 1986; 71 FR 39519, July 13, 2006]

#### § 235.4 Allocation of funds to States.

(a) *Nondiscretionary SAE Funds.* For each fiscal year, FNS shall allocate the following:

(1) To each State which administers the National School Lunch, School Breakfast or Special Milk Programs an amount equal to one (1) percent of the funds expended by such State during the second preceding fiscal year under

sections 4 and 11 of the National School Lunch Act, as amended, and sections 3, 4 and 17A of the Child Nutrition Act of 1966, as amended. However, the total amount allocated to any State under this paragraph shall not be less than \$200,000 or the amount allocated to the State in the fiscal year ending September 30, 1981, whichever is greater. On October 1, 2008 and each October 1 thereafter, the minimum dollar amount for a fiscal year for administrative costs shall be adjusted to reflect the percentage change between the value of the index for State and local government purchases, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year, and the value of that index for the 12-month period ending June 30 of the preceding fiscal year.

(2) To each State which administers the Child and Adult Care Food Program an amount equal to the sum of: Twenty percent of the first \$50,000; ten percent of the next \$100,000; five percent of the next \$250,000; and two and one-half percent of any remaining funds expended within the State under section 17 of the National School Lunch Act, as amended, during the second preceding fiscal year. FNS may adjust the amount of any such allocation in accordance with changes in the size of the Child and Adult Care Food Program in a State.

(3) For each of fiscal years 2005 through 2007 no State shall receive less than its fiscal year 2004 allocation for administrative costs for all child nutrition programs.

(b) *Discretionary SAE Funds.* For each fiscal year, FNS shall provide the following additional allocations:

(1) Allocate \$30,000 to each State which administers the Child and Adult Care Food Program (7 CFR part 226).

(2) \$30,000 to each State which administers the Food Distribution Program (part 250 of this chapter) in schools and/or institutions which participate in programs under parts 210, 220, 226 of this chapter.

(3) Amounts derived by application of the following four-part formula to each State agency which is allocated funds under paragraph (a) of this section:

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(i) One equal share of forty (40) percent of the funds designated by FNS for the reviews conducted under §210.18 of this title.

(ii) The ratio of the number of School Food Authorities participating in the National School Lunch or Commodity School Programs under the jurisdiction of the State agency to such School Food Authorities in all States times twenty (20) percent of the funds designated by FNS for reviews conducted under §210.18 or of this title.

(iii) The ratio of the number of free and reduced price meals served in School Food Authorities under the jurisdiction of the State agency during the second preceding fiscal year to the number of free and reduced price meals served in all States in the second preceding fiscal year times twenty (20) percent of the funds designated by FNS for reviews conducted under §210.18 of this title.

(iv) Equal shares of twenty (20) percent of the funds designated by FNS for reviews conducted under §210.18 of this title for each School Food Authority under the jurisdiction of the State agency participating in the National School Lunch or Commodity School Programs which has an enrollment of 40,000 or more; *Provided, however,* That for State agencies with fewer than two School Food Authorities with enrollments of 40,000 or more, an equal share shall be provided to the State agency, for either, or both, of the two largest School Food Authorities which have enrollments of more than 2,000; and *Provided, further,* That State agencies with only one School Food Authority, regardless of size, shall be provided with one equal share. For each fiscal year, the amount of State Administrative Expense Funds designated by FNS for reviews conducted under §210.18 of this title and subject to allocation under this paragraph shall be equal to or greater than the amount designated by FNS for program management improvements for the fiscal year ending September 30, 1980.

(4) Funds which remain after the allocations required in paragraphs (a)(1), (a)(2), (b)(1), (b)(2) and (b)(3) of this section, and after any payments provided for under paragraph (c) of this section, as determined by the Secretary, to

those States which administer the Food Distribution Program (part 250 of this chapter) in schools and/or institutions which participate in programs under parts 210, 220, or 226 of this chapter and to those States which administer part 226 of this chapter. The amount of funds to be allocated to each State for the Food Distribution Program for any fiscal year shall bear the same ratio to the total amount of funds made available for allocation to the State for the Food Distribution Program under this paragraph as the value of USDA donated foods delivered to the State for schools and institutions participating in programs under parts 210, 220 and 226 of this chapter during the second preceding fiscal year bears to the value of USDA donated foods delivered to all the States for such schools and institutions during the second preceding fiscal year. The amount of funds to be allocated to each State which administers the Child and Adult Care Food Program for any fiscal year shall bear the same ratio to the total amount of funds made available for allocation to all such States under this paragraph as the amount of funds allocated to each State under paragraph (a)(2) of this section bears to the amount allocated to all States under that paragraph.

(c) *SAE Funds for the Child and Adult Care Food Program.* If a State elects to have a separate State agency administer the adult care component of the Child and Adult Care Food Program, such separate State agency shall receive a pro rata share of the SAE funds allocated to the State under paragraphs (a)(2), (b)(1), and (b)(4) of this section which is equal to the ratio of funds expended by the State for the adult care component of the Child and Adult Care Food Program during the second preceding fiscal year to the funds expended by the State for the entire Child and Adult Care Food Program during the second preceding fiscal year. The remaining funds shall be allocated to the State agency administering the child care component of the Child and Adult Care Food Program.

(d) *SAE Start-up Cost Assistance for State Administration of Former ROAPs.* For any State agency which agrees to

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assume responsibility for the administration of food service programs in nonprofit private schools or child and adult care institutions that were previously administered by FNS, an appropriate adjustment in the administrative funds paid under this part to the State shall be made by FNS not later than the succeeding fiscal year. Such an adjustment shall consist of an amount of start-up cost assistance, negotiated with the State agency, of no less than \$10,000 and not exceeding \$100,000, per State.

(e) *SAE Funding Reduction Upon State Agency Termination of a Food Service Program.* For any State agency which terminates its administration of any food service program for which State administrative expense funds are provided under this part, a reduction in the amount of such funds, negotiated with the State agency, shall be made by FNS.

(f) *SAE Funds for ROAPs.* FNS shall have available to it the applicable amounts provided for in paragraphs (a)(1), (a)(2), and (b)(1) of this section, and part 225 of this title, when it is responsible for the administration of a program or programs within a State.

(g) *Reallocation.* Funds allotted to State agencies under this section shall be subject to the reallocation provisions of § 235.5(d).

(h) *Withholding SAE funds.* The Secretary may withhold some or all of the funds allocated to the State agency under this section if the Secretary determines that the State agency is seriously deficient in the administration of any program for which State administrative expense funds are provided under this part or in the compliance of any regulation issued pursuant to those programs. On a subsequent determination by the Secretary that State agency administration of the programs or compliance with regulations is no longer seriously deficient and is operated in an acceptable manner, the Sec-

retary may allocate some or all of the funds withheld.

(Sec. 14, Pub. L. 95–166, 91 Stat. 1338 (42 U.S.C. 1776); sec. 7, Pub. L. 95–627, 92 Stat. 3621 (42 U.S.C. 1776); sec. 7(a), Pub. L. 95–627, 92 Stat. 3622 (42 U.S.C. 1751); Pub. L. 96–499, secs. 201 and 204, 94 Stat. 2599; secs. 805, 812, 814 and 819, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1754, 1759a, 1774 and 1776); E.O. 12372 (July 14, 1982, 47 FR 30959); sec. 401(b) Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6506(c))

[44 FR 48957, Aug. 21, 1979, as amended at 44 FR 51185, Aug. 31, 1979; 44 FR 53489, Sept. 14, 1979; 45 FR 3566, Jan. 18, 1980; Amdt. 11, 48 FR 27892, June 17, 1983; Amdt. 14, 51 FR 27151, July 30, 1986; Amdt. 15, 51 FR 33862, Sept. 24, 1986; Amdt. 17, 55 FR 1378, Jan. 16, 1990; 56 FR 32949, July 17, 1991; 58 FR 42489, Aug. 10, 1993; 60 FR 15462, Mar. 24, 1995; 64 FR 50743, Sept. 20, 1999; 71 FR 46075, Aug. 11, 2006]

### § 235.5 Payments to States.

(a) *Method of payment.* FNS will specify the terms and conditions of the State agency's annual grant of SAE funds in conjunction with the grant award document and will make funds available for payment by means of a Letter of Credit issued in favor of the State agency. The total amount of a State agency's grant shall be equal to the sum of the amounts allocated to such agency under § 235.4 plus or minus any adjustments resulting from the reallocation provisions under paragraph (d) of this section plus any transfers under § 235.6(a) and/or § 235.6(c) of this part. The amount of SAE funds made available for payment to a State agency in any fiscal year shall be determined by FNS upon approval of the State agency's administrative plan under paragraph (b) of this section and any amendments to such plan under paragraph (c) of this section. Funds shall not be made available before the State agency's plan or amendment to such plan, as applicable, has been approved by FNS. However, if the plan has not been approved by October 1 of the base year, FNS may advance SAE funds to the State agency, in amounts determined appropriate by FNS, pending approval of the plan.

(b) *Administrative plan.* (1) Each State agency shall submit, subject to FNS approval, an initial State Administrative Expense plan based upon guidance